



COUNCIL OF CHIEF STATE SCHOOL OFFICERS

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February 22, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY*Via Hand Delivery*

Magalie Roman Salas
 Secretary
 Federal Communications Commission
 The Portals, 445 Twelfth Street, SW.
 Washington, DC 20554

Re: CC Docket No. 96-45
EX PARTE DOCUMENT

Dear Ms. Salas:

The document attached incorporates information and a summary of discussions that were presented to officials in the Office of the Chairman and Common Carrier Bureau over the course of the past three weeks. The set of administrative problems and proposed solutions in the document entitled **General Concerns Regarding State and Local Procurement Practices** has been reviewed, and endorsed jointly, by the Council of Chief State School Officers (CCSSO) and American Library Association on behalf of school and library applicants for telecommunications discounts -- authorized by the Telecommunications Act of 1996 (Section 254(h), P.L. 104-104).

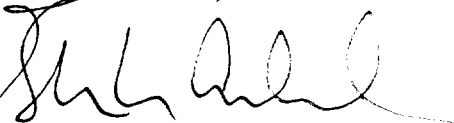
The purpose of this submission is to assist the Commission and the Common Carrier Bureau in modifying previous decisions in order to assure that all of the nation's schools and libraries receive the benefits of advanced telecommunications facilities and services. As our statement and summary of issues illustrate, several actions taken by the Commission have had unforeseen and negative consequences on many schools and libraries that have anticipated receiving the full benefits of telecommunications service discounts. We believe the experiences gained during the initial funding cycle of the program can guide the Commission in making the program more effective and efficient.

The recommendations included in this Ex Parte document are designed to increase the effectiveness of the Schools and Libraries Division of the Universal Service Administrative Company (USAC) to increase participation in the universal service discount program from schools and libraries that have the least resources and support for developing eligible applications for discounts. The proposals reflect considerable experiences and firsthand knowledge of state and local officials who have been working since day-one of this program to ensure its success. The substantial amount of time and attention our national organizations have devoted to this program over the past two and one-half years reflect the critical importance our members have assigned to its success.

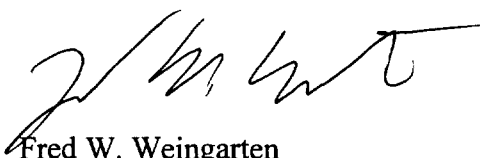
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The Council of Chief State School Officers and the American Library Association strongly urge the Chairman and the Commissioners to recognize the enormous impact this program is having on upgrading the quality of services offered by the nation's schools and libraries. We trust all Commissioners share our expectations for the program and the opportunities it provides for children and families in all communities. To that end, our organizations have drawn upon the advice and experience of state and local officials to provide the Commission with a set of constructive proposals that will help the Commission in carrying a major provision of the 1996 Act.

Respectfully submitted,



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Executive Director
Council of Chief State School Officers



Fred W. Weingarten
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General Concerns Regarding State and Local Procurement

A statement submitted by the Council of Chief State School Officers
and American Library Association
to the Federal Communications Commission
February 22, 1999

One of the premises of the Universal Service Fund (USF) Programs, and the Telecommunications Act of 1996, on which it is based, is the advancement of competitive markets. The Snowe-Rockefeller-Exon-Kerrey Amendment that added Section 254(h), sought to enhance the availability of advanced telecommunications and information services to schools, libraries and rural health care providers in the context of the evolving competitive telecommunications marketplace.

When the initial rules for participating in the schools and libraries discount program were first announced, the application process was contemplated to be on a "first come, first served basis." Whenever the application was completed and presented to the Schools and Libraries Division (SLD), the application would be processed and funded if monies were available. As the Commission's revised funding constraints were imposed, sufficient funds were no longer available to meet school and library applicant demand. As a result, the application process has evolved to one that is constrained by a limited filing window.

In order for an applicant to have meaningful opportunity to obtain discounts, its entire bidding process must be completed and its application must be submitted on or before the deadline for the application-filing window. This window filing procedure currently requires state and local officials to reschedule, compress and synchronize their service procurements so as to be able to meet the application filing window deadline. This timing constraint is the source of a number of the concerns and issues that the Council of Chief State School Officers (CCSSO) and the American Library Association (ALA) has identified herein. The CCSSO and the ALA believe that these concerns have not been identified previously for the Commission's consideration.

As shown below, the implementation of the USF program administrative rules with regard to procurement are not altogether complementary to existing state and local competitive procurement practices governing the purchase of services are eligible for support under the Schools and Libraries Universal Service Support Mechanism. In those situations where the USF program rules are not reconcilable with state and local rules, school and library applicants may find it difficult to meaningfully participate and benefit from the USF support mechanism. Based on the practical experience acquired from the Year 1 application process, the CCSSO and the ALA propose a set of procedural adjustments to facilitate more efficient coordination of program rules with existing state and local competitive procurement practices.

We believe that the suggested procedures will provide more flexibility to applicants in order to more readily participate and benefit from the USF program, without compromising the fundamental principles underlying the Schools and Libraries Universal Service Support Mechanism. We also believe that the suggestions can be implemented with a minimum of disruption to the existing procedures followed by the Fund Administrator for the Universal Service Administrative Company - Schools and Libraries Division (SLD).

Many local education agencies and libraries use master contracts to ensure that the most qualified vendors have been selected through a process that has a history of program integrity. In addition, they benefit from the aggregated buying power not available to individual schools and libraries and avoid the complex, expensive, and burdensome chores of local bidding processes. In some states, schools and libraries are not required to rely exclusively on state or regionally-negotiated contracts as the source of services. However, most local school districts and libraries recognize the advantages of using state or regional master contracts. Indeed, many local purchasing agents use these master contracts as a benchmark for evaluating other solicited bids. They also rely on state or regional oversight authority to ensure the quality of services delivered.

If prospective local purchasing entities determine that the state or regional master contracts provide the offering that meets their needs most effectively and efficiently, the schools and libraries may voluntarily select such contracts. State or regional master contracts also assure that there is a high quality appeal and arbitration process. These factors are particularly relevant in smaller suburban and rural areas where procurement capacity is thin and local vendor preference is an influence. In these cases, it may well be more feasible for local schools or libraries to obtain a truly competitive arrangement by relying on a competitively bid master contract, rather than soliciting bids on a local level. In other cases, a library may rely on its city or county telecommunications infrastructure to procure the most attractive, cost-effective arrangement.

In a few states, school and/or library entities are required to rely on the terms and prices for services that were competitively bid pursuant to a statewide master contract. In these situations, too, schools and libraries procure services based on a process that was founded upon competitive bidding.

Developers of the Universal Service Support Mechanism for Schools and Libraries contemplated that schools and libraries would continue to receive the benefits of master contracts as a means of procurement. The possibility for making use of a master contract is explicitly referenced in the rules governing existing contracts. The date of execution of a master contract represents the applicable date for purposes of determining whether and to what extent the school or library applicant may be exempt from the competitive bidding requirement prescribed in the FCC rules [47 C.F.R. Section 54.511(c)(2) and 54.504(b)(4)].

The existing program rules acknowledge that while price is a key element in evaluating and selecting a bidder to provide services, there are other relevant factors that may be considered when selecting the most *cost effective bid*. [47 C.F.R. Section 54.511]. The FCC's Report and Order that established the Universal Service Support Mechanism for Schools and Libraries also highlights this point. (Federal Register, p. 32902, par. 287.)

The existing program rules recognize the importance of existing state and local procurement requirements. The FCC rules prescribe that the competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.

If administrators of the USF program are to follow the intent of the federal legislation, the bidding regulations must consider state and local purchasing rules and laws. These items are documented in detail in a publication of the National Association of State Purchasing Officials. The states' competitive bidding and purchasing practices for telecommunications services and equipment can be found in the Survey of State and Local Government Purchasing Practices, which is published by the National Association of State Purchasing Officials.

Contract Problem Descriptions

1. Problem: Short-term (one year or less) contracts have start and ending dates which don't fit in the window.

If a contract (state or local) expires before the end of the funding year, the new or replacement contract cannot be executed in all instances on or before the application filing window deadline. For example, the second funding year application window ends on April 6, 1999, and requires that requests for discounts on services for the period July 1, 1999 through June 30, 1999 be included in the Form 471 application. If a contract is due to expire on November 30, 1999, then the new contract must be executed before April 6, 1999—more than seven months before the contract would take effect—in order for Form 471 applicants to be able to request a full year's discounts on the services covered in the expiring contract.

Solution:

- Allow applicants to post a Form 470 at any time during a funding year for those contracts that are due to expire sometime during the funding year, as stated in 47 C.F.R. Section 54.507(c) and eliminate the parenthetical statement in the 54.511 (c)(3) Note "(FCC Forms 470 and 471)."
- Allow the submission of a Form 471 application *before* a contract is signed. The applicant must sign a contract before a funding commitment is issued--perhaps by some date certain after the close of the window but before the application will go

through PIA review for compliance with program rules.

- Allow the applicant, on the Form 471 application, to presume that the contract would be extended through the end of the funding period at the same price and terms of the expiring contract. (See 54.504(c)).
- Allow, in addition, the submission of a Form 471 application, with a signed contract, to rely on a posted Form 470 and associated bidding, so long as the contract is signed at least 28 days after the posted Form 470. In other words, a Form 470 filed in the funding year should be able to be used on a Form 471, so long as the 28-day rule has been met and competitive bidding has occurred. We believe that no change in rule is required, only a change in the procedure adopted by FCC/SLD.

If adopted, these proposals allow a continuously open time frame for bidding and Form 470s, but a limited window in which Form 471s are filed, to assure that the contracts get maximum national exposure and sufficient time to be completed under state procurement rules. The FCC/SLD are well within their purview to develop criteria for what constitutes a valid master contract, but current Rules are far too restrictive as explained below. Among the criteria the FCC/SLD might develop would include limits on total length of time, for example, to ensure that there is sufficient opportunity for competition. For these short-term contracts, administrative procedures of the SLD should allow an E-Rate funding allowance to be used by more than one vendor if the selection of the vendor meets state and local procurement rules.

This solution would require the FCC to modify the rule that requires that a contract must be signed for service before a Form 471 application can be submitted to the SLD. [See 47 C.F.R. Section 54.504(b)(4)] In this instance, the Form 471 application would be submitted *before* a contract was signed, so that the applicant could file by the deadline for the application filing window.

Examples: Pennsylvania, New York, Virginia, Illinois

2. Problem: A contract with an initial term/length is due to expire, and the bid upon which the contract was based, contemplated the possibility of automatic renewals of the contract. State and local laws often define these renewals in such a manner that the FCC rules define them as a "voluntary extension," thus currently requiring a new competitive bidding process.

Solution: Change 47 CFR 54.511 (d) to allow voluntary extensions of existing contracts to be exempt from additional competitive bidding requirements, if the potential of the entire term was described in the initial Request for Proposal and resulting contract.

Examples: West Virginia, Maryland, Louisiana, Mississippi, Colorado, New Jersey, Michigan

3. Problem: State or local procurement rules permit a change in the vendor when a "material change" occurs with the contract. FCC rules require a new competitive bid, but often state procurement rules do not. The material change may result from a problem with the original vendor, a procurement rule such as the opportunity to reduce the price, or an assignment of a product to another vendor. In these cases, a subsequent vendor receives the contract. In this situation, the vendor identified initially as a result of bidding and posting of a Form 470, and provided at the time of filing on the Form 471, changes during the course of the program year in accordance with state or local procurement rules.

Solution:

- Allow a change of vendor through an administrative process of the SLD that permits no more funding than specified in the original Funding Commitment Decisions Letter, but which allows a transfer to the vendor which meets state or local procurement rules.
- SLD has proposed a procedure for changing SPINs (vendors) under certain limited circumstances AFTER a funding commitment is made. This issue seeks to allow SPIN changes during the application review period as well.

Examples: California, Florida, Illinois, Iowa, Kentucky, Michigan, New York, New Jersey, Tennessee, Texas, Utah, Virginia, West Virginia.

4. Problem: A vendor providing service under a master contract is permitted to make a substitution that is within the scope originally specified in the Request for Proposal or resulting contract. Under state or local procurement rules, no new competitive bidding is required. Such substitutions or modifications require a contract amendment in accordance with state or local procurement rules. These substitutions or modifications, under state or local procurement rules are typically designed to avoid technological obsolescence, reduce pricing, and/or provide better performance and/or more quantity for the same price. - We do not believe that this is a rule change, but rather a procedure change within FCC/SLD. The First Order, FCC 97-157, para. 475 defines the opportunity and the incentive to allow schools and libraries to have the lowest price charged. The rule 54.500 (g) on *Minor contract modifications* envisions that these are within the scope of the original contract and have no effect on price, quantity, quality, or delivery. State and local procurement rules have recognized that modifications have to be within the scope of the original contract and must be at least as effective in price, quantity or quality.

Solution:

Contract amendments would be acceptable according to state or local procurement rules, before or after a Funding Commitment letter - has been issued, as long as the changes are

within the scope of the original bidding process which was posted via Form 470, or as a result of a master contract.

Examples: Florida, Kentucky, Michigan, New York, Tennessee, Virginia, West Virginia, New Jersey.

Note: Some applicants are relying on a master contract that offered a lower price than the bids received from a Form 470 posting. The contract amendments from these should also be eligible.

Administrative, not FCC:

5. Problem: Applicants were not advised that they needed to split services among the three categories, but are now being penalized by the priority rules because the SLD are reclassifying expenditures.

Solution: Use the appeals process to define services as to what is in each category, rather than reclassifying everything as "Internal Connections" and denying requested services.

Examples: all states and all libraries